

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 9 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and
MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

KANUBHAI JAGANBHAI RATHVA

Versus

STATE OF GUJARAT

Appearance:

MR JV DESAI for Petitioner

MR. Y.F. MEHTA, A.P.P., for the respondents.

CORAM : MR.JUSTICE N.J.PANDYA and

MR.JUSTICE H.L.GOKHALE

Date of decision: 06/12/96

ORAL JUDGEMENT (Per N.J. PANDYA,J)

The accused appellant in Sessions Case No. 48 of 1988 of the court of learned Additional Sessions Judge, Baroda, has filed the present appeal as he came to be convicted under Section 302 of I.P.C. by the order dated 23.12.1988.

The case of the prosecution is that on 25.6.1988 at about 8.30 p.m. the accused insisted upon his wife to crush chilly presumably to be used for evening meal. She did not oblige and therefore the appellant got angry and started quarrelling with his wife. Thereafter, not satisfied with verbal assault, he sprinkled kerosene on his wife Kokilaben while she was cooking and set her ablaze. She ran out of the hut with shouting and therefore neighbours gathered together and burning clothes were doused and she was soon taken to local hospital at Chhotaudepur. The police also came on the place immediately. From the local hospital she was removed to Maharaja Sayaji Hospital where she died on 19.7.1988 on account of septic shock and other complications.

In the background of the aforesaid set of facts it is obvious that the prosecution will be relying on oral and written dying declaration that might have been recorded. Oral testimony can be of the neighbours and that is what the prosecution has led before the trial court in form of testimony of Shankerbhai Chhotubhai P.W. 1, Bhikhabhai Natubhai P.W. 4, both of whom have supported the prosecution in general terms while one witness Maniben Shankerbhai has resiled from her earlier statement and therefore has not supported the prosecution.

However, when she was removed to Chhotaudepur Hospital in presence of Dr. Mayank Desai who usually treated her the Police Officer had recorded the statement of the deceased which has been taken as First Information Report for the purpose of this case. The complaint is at Exh. 17 at page 64 of the paper book. Needless to say the said complaint at Exh. 17 clearly is to the effect that the accused has sprinkled kerosene on Kokilaben and she was set ablaze on account of that trifle dispute of crushing chilly. The Police Officer, Jagatsinh, P.W. 8, Exh. 26 recorded the same.

As this testimony of the Police Officer who recorded the same is not enough, during the cross-examination of Dr. Mayank Desai, Exh. 15 on behalf of defence a question is put with regard to the contents of the said complaint Exh. 17. The Doctor in his cross-examination has asserted that he was present throughout when the complaint came to be recorded and on that complaint he has put his signature also. It was shown to him and he has identified the same. In the cross-examination a question has been put that the learned judge has taken precaution to record in question answered form.

The question is that the woman who was burning has stated something in her complaint. Can the witness say what she has stated? The answer given by the Doctor is that she revealed quarrel with her husband at the time of preparation of evening meal and that her husband sprinkled kerosene on her and put her to match.

The doctor being present at the time of recording of complaint he naturally heard whatever that the deceased had stated to the Investigation Officer. In absence of written document like the complaint which came into existence because of the statement of the deceased, the doctor being present at that time, he would have been a witness for an oral dying declaration. Therefore, his statement in that regard would have been admissible under Section 32 of the Indian Evidence Act as revealing the cause of death. As the complaint has been recorded in writing, the testimony of the doctor has the effect of corroborating the complaint.

In the further statement the accused has tried to make out a case that at the time of the alleged incident he was not present in his hut but has gone into market. This is clearly an afterthought as no such case is put to any of the witnesses.

Learned Advocate Mr. Desai appearing for the accused has strenuously tried to make out a case that none of the dying declarations are worthy reliance. The learned trial judge has obviously relied on them and in spite of the said strenuous effort of the learned Advocate Mr. Desai, no circumstances could be brought to our notice whereby it could be said that the dying declarations are not worthy of reliance.

The result therefore is that the appeal fails. The appeal is rejected. The order of conviction passed by the trial court is confirmed.

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